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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

COUNT'S KUSTOMS, LLC, a Nevada
corporation,
Plaintiff,

vs.

JOSEPH FRONTIERA, an individual, and
RANDSTAD PROFESSIONALS US, LP a
Delaware Corporation dba RANDSTAD
PROFESSIONALS, DOES I-X and DOE
CORPORATIONS XI – XX, inclusive,

RANDSTAD PROFESSIONALS US, LP,
Counterclaimant,

vs.

COUNT'S KUSTOMS, LLC,
Counterdefendant.

RANDSTAD PROFESSIONALS US, LP,
Cross-Claimant,

vs.

JOSEPH FRONTIERA,
Cross-Defendant.

Case No.: 2:16-cv-00910-JAD-GWF

**PLAINTIFF'S MOTION TO STRIKE
DEFENDANT FRONTIERA'S MOTION
TO DISMISS AS UNTIMELY**


**PLAINTIFF'S MOTION TO STRIKE DEFENDANT FRONTIERA'S MOTION
TO DISMISS AS UNTIMELY**

Plaintiff/ Counterdefendant, COUNT'S KUSTOMS, LLC, ("Plaintiff" or "CK"), by and through its attorney Steven Mack, Esq. of the law firm of Black & LoBello hereby submits its Motion to Strike Defendant/Cross-Defendant, Joseph Frontiera's Motion to Dismiss as Untimely.

This Motion is made and based upon the pleadings and papers filed in this matter, the Exhibits attached hereto, and any argument or other evidence produced at the time of this hearing.

DATED this 13th day of May, 2016.

BLACK & LOBELLO


STEVEN MACK, ESQ.
Nevada Bar No. 4000
10777 W. Twain Ave., Third Floor
Las Vegas, Nevada 89135
Attorneys for Plaintiff

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

This is an action that exists as a result of Randstad's failure to perform basic vetting of a candidate that was provided to the Plaintiff, and that person, Frontiera, committed multiple improper and illegal acts causing substantial damages to Plaintiff.

A Complaint was filed in District Court on March 22, 2016 and served upon Defendant Randstad on March 28, 2016. Randstad filed an answer, counterclaim and cross claim on April 18, 2016.

The Complaint and Summons were served on Defendant Frontiera on April 4, 2016.

This case was removed to Federal Court on April 22, 2016.

1 Counsel for Defendant/Counter-Defendant Frontiera first made an appearance in this case
2 on April 27, 2016, and then requested an extension to answer or otherwise plead to the case.

3 Counsel signed a Stipulation to Extend the Time to Respond to Initial Complaint which
4 was filed May 5, 2016. The Stipulation gave Defendant/Counter-Defendant Frontiera until May
5 9, 2016 to file a responsive pleading to Plaintiff's Complaint. Defendant/Counter-Defendant
6 Frontiera did not file his responsive pleading until May 10, 2016.

7 II. ARGUMENT

8 This Motion is made pursuant to FRCP 12(f)(2), wherein Plaintiff was served the
9 responsive pleading, however, the pleading was untimely, and should be stricken and Defendant
10 Frontiera should be forced to file an answer to the complaint.

11 Pursuant to FRCP 12(a)(1)(A) "A defendant **must** serve an answer: (i) within 21 days
12 after being served with the summons and complaint" (emphasis added).

13 Although an extension was granted by this Court and agreed to by Plaintiff, the extension
14 was granted to May 9, 2016, not May 10. The same rule applies, in that the responsive pleading
15 **must** be filed by the extended time. Timing rules are strictly construed.¹

16 Defendant was late and the responsive pleading should be stricken.

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27 ¹ *Willms v. Sanderson*, 723 F.3d 1094 (9th Cir. 2013) time frames for filing complaint objecting to
28 discharge is strictly construed. *Eastman v. First Data Corp.*, 736 F.3d 675 (3d Cir. 2013), Timing rules
are critical. Failure to strictly comply with them can result in dismissal (of an appeal in this particular
case), even when counsel makes what appears to be an honest error of interpretation.

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DATED this 13th day of May 2016.

STEVEN MACK, ESQ.
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Las Vegas, Nevada 89135
Attorneys for Plaintiff

CERTIFICATE OF MAILING

Pursuant to FRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 13th day of May, 2016, I caused the above and foregoing document entitled **PLAINTIFF'S MOTION TO STRIKE DEFENDANT FRONTIERA'S MOTION TO DISMISS AS UNTIMELY** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

☒ by electronic service through the Federal Court's ECF system;

☐ pursuant to EDCR 7.26, to be sent via facsimile;

☐ hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

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and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

/s/ Shirley Blackburn
An Employee of Black & LoBello